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To: Richard Bridal, Jim Zolnierrek

Re: NCLC Comments, Performance Based Regulation Workshops

Date: November 1, 2021

The National Consumer Law Center¹ respectfully submits these Comments to the Illinois Commerce Commission Staff related to the establishment of Performance Based Ratemaking (PBR) metrics in the Staff-led workshops for Commonwealth Edison Company (ComEd) and Ameren Illinois Company (Ameren), pursuant to the schedule established by Staff and Section 16-108.18(e)(6) of the Public Utilities Act (PUA). In addition to these Comments, NCLC submits its PowerPoint slide presentation, which was included on the agenda of the October 27, 2021 workshop.

I. Hundreds of thousands of Illinoisans cannot afford essential electric and gas utility service.

Low income customers in Illinois, as in all states, face significant challenges when it comes to affording essential utility services, including electricity, heat, water and broadband internet. The Illinois Energy Assistance Act², which created Illinois' Percentage of Income Payment Plan program, sets affordable electric and gas bills at 6% of monthly income.³ But even after financial assistance is provided through the Low Income Home Energy Assistance Program (LIHEAP) and PIPP, the energy burden – defined as the percentage of monthly income devoted to energy bills – of many low income customers greatly exceeds 6%, as shown below:⁴

¹ Since 1969, the nonprofit National Consumer Law Center® (NCLC) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

² See 20 ILCS 305/1 *et. seq.*; <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1416&ChapterID=28>

³ 20 ILCS 305/18(c)(2).

⁴ See Slide 5 of NCLC's October 27, 2021 workshop presentation. Source, April 2020 Policy Advisory Council presentation by David Wortman, Deputy Director, Office of Energy Assistance, Department of Commerce and Economic Opportunity (DCEO). "EB" stands for "energy burden."

LIHEAP

Percent of Poverty	Application Count	Utility Bill	LIHEAP Benefit	Income	EB Prior	EB After
0-50	61,392	2,171	913	4,940	44%	25%
51-100	113,810	2,067	692	12,930	16%	11%
101-150	76,348	2,075	526	20,364	10%	8%
Grand Total	251,550	2,092	681	13,848	15%	10%

PIPP

Percent of Poverty	Application Count	Utility Bill	PIPP Benefit	Income	EB Prior	EB After
0-50	2,331	2,102	1,041	5,839	36%	18%
51-100	13,235	2,051	978	10,868	19%	10%
101-150	8,069	2,266	906	17,151	13%	8%
Grand Total	23,635	2,129	960	12,517	17%	9%

Moreover, the majority of income-eligible households in Illinois are not enrolled in LIHEAP/PIPP programs according to Department of Commerce and Economic Opportunity (DCEO) data. Specifically, statewide LIHEAP and PIPP enrollment was: 232,221 and 30,659, respectively, in the 2020-2021 fiscal year⁵. In comparison, according to U.S. Census poverty data and ComEd and Ameren recent energy efficiency plan presentations, more than 40% of ComEd's 3.5 million⁶ residential customers qualify as at or below 80% area median income and 41% of Ameren's 1.2 million residential customers are eligible for LIHEAP.⁷ Clearly, most Illinois low-income households, notwithstanding their eligibility, are not receiving energy assistance under LIHEAP and PIPP.

In addition, the U.S Energy Information Administration reports that nearly 1 in 3 U.S. households faces challenges in apaying energy bills or keeping their homes heated or cooled, as shown in the chart below.⁸

⁵ Department of Commerce and Economic Opportunity (DCEO) Policy Advisory Council presentation, reported July 29, 2021.

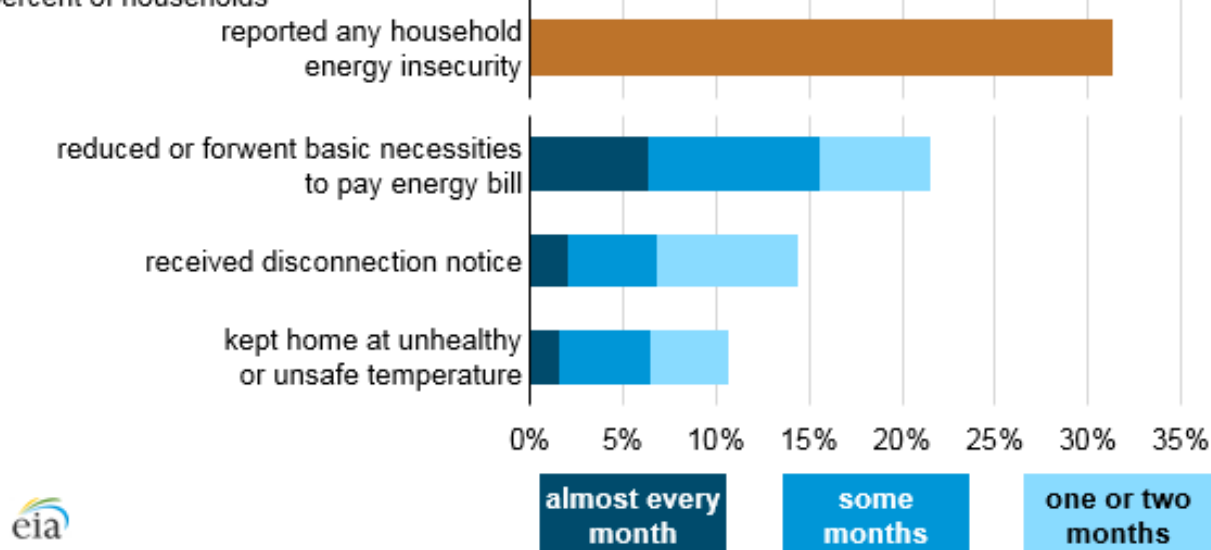
⁶ See <https://www.icc.illinois.gov/docket/P2020-0309/documents/315671>

⁷ See ICC Docket No. 21-0155, Ex. 1.01, p. 16 of 86 (ComEd); ICC Docket No. 17-

⁸ <https://www.eia.gov/todayinenergy/detail.php?id=37072>

Households that experienced energy insecure situations, 2015

percent of households

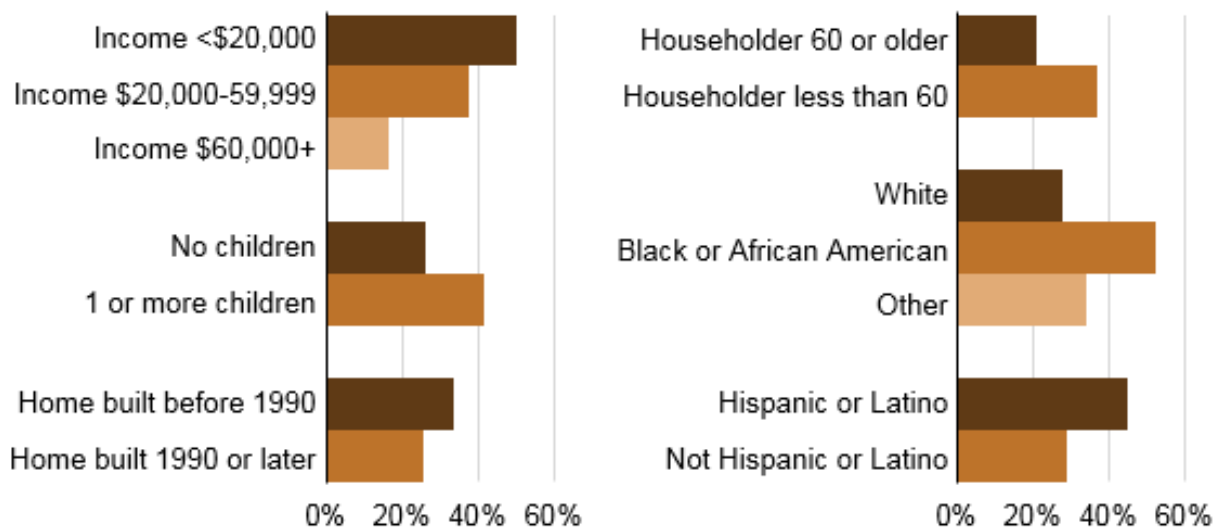


Source: U.S. Energy Information Administration, [Residential Energy Consumption Survey 2015](#)

Moreover, these burdens fall to a greater extent on Black and Brown U.S. households, according to the EIA:

Household energy insecurity by household characteristics, 2015

percent of households



Source: U.S. Energy Information Administration, [Residential Energy Consumption Survey 2015](#)

This disproportionate impact of energy unaffordability in Black and Brown households is similarly revealed in Illinois-specific data. Illinois utilities have been filing monthly disconnection data in a recent 2020 Notice of Inquiry proceeding (20-NOI-01), in ICC Docket No. 20-0309 pursuant to a settlement with COFI and other consumer intervenors, and now as a result of the passage of the Energy Transition Act. A recent Tufts University analysis of this Illinois Ameren and ComEd zip-code-level disconnection data from 2013-2020 found that:

- In 2018–2019, customers in Black and Hispanic zip codes were about 4 times more likely to be disconnected for nonpayment, controlling for zip code distributions of income and other demographic characteristics.
- During the COVID-19 pandemic, there has been a ninefold expansion in low-income assistance to pay utility bills, but disconnections were double and deferred payment plans triple their historical averages in October 2020.
- Disconnection notices were served to 3.4% of residential accounts each month in late 2020. About 20% of all accounts were charged late fees. The odds for each of these measures were multiples higher in minority zip codes.⁹

These statistics demand that significant change in disconnection practices is needed – now and in future PBR metrics – to remove these disparities in disconnection impacts. Ameren and ComEd should prioritize energy affordability for low-income customers in any PBR metrics proposal, which should emphasize reducing energy burdens and revising current disconnection algorithms to better protect low-income households from disconnection of essential utility services. In addition, these metrics should restore equity to credit and collection practices to ensure Black and Brown communities are not disproportionately impacted by these utilities' credit and collection practices.

II. Any PBR framework should assign significant weight to inciting utility reduction of energy burden and uninterrupted access to utility service for the state's low-income customers.

As discussed during the workshops, Section 16-108.18(c) provides that the PBR framework should be designed, among other objectives, to:

- ... (5) maintain the affordability of electric delivery services for all customers, including low-income customers;
- ... (8) address the particular burdens faced by consumers in environmental justice and equity investment eligible communities, including shareholder, consumer, and publicly funded bill payment assistance and credit and collection policies, and ensure equitable disconnections, late fees, or arrearages as a result of utility credit and collection practices, which may include consideration of impact by zip code.¹⁰

Thus, for the first time in Illinois, the Commission is required to look beyond the concept of "just and reasonable rates" set forth in Section 9-101 of the Act¹¹ and include these particular affordability considerations. In addition, the Commission is charged with approving metrics designed to achieve incremental improvements over baseline performance values and targets, over a performance period of up to 10 years, and no less than 4 years. The Commission is required to approve no more than 8 metrics, with at least one metric from each of several categories listed in Section 16-108.18(e)(2)(A), including:

(iv) Achieve affordable customer delivery service costs, with particular emphasis on keeping the bills of lower-income households, households in equity investment eligible communities, and household in environmental justice communities within a manageable portion of their income and adopting credit and collection policies that reduce disconnections for these households specifically and for customers overall to ensure equitable disconnections, late fees, or arrearages as a result of utility credit and collection practices, which may include consideration of impact by zip code. (Emphasis added.)

When setting the appropriate level of PBR incentive points and penalties, it is critical to understand the limited number of return on equity (ROE) basis points at stake for the utilities to ensure that affordability is given its proper due. Section 16-108(e)(2)(B) provides that:

⁹ The incidence of extreme economic stress: Evidence from utility disconnections, Steve Cicala, Tufts University. <http://www.stevecicala.com/papers/disconnections/disconnections.pdf>

¹⁰ 220 ILCS 5/16-108.18(c).

¹¹ 220 ILCS 5/9-101.

“Incentives shall be rewards or penalties or both, reflected as basis points added to, or subtracted from, the utility's cost of equity. The metrics and incentives shall apply for the entire time period covered by a Multi-Year Rate Plan. The total for all metrics shall be equal to 40 basis points, however, the Commission may adjust the basis points upward or downward by up to 20 basis points for any given Multi-Year Rate Plan, as appropriate, but in no event may the total exceed 60 basis points or fall below 20 basis points.

Thus, in total, the metrics to be established will provide incentives or penalties of at most 60 basis points. Given that potential limited impact on corporate behavior, it is essential that the new affordability metric or metrics are assigned a significant and high enough portion of the total metric points available to Ameren and ComEd to incite improvement in disconnection outcomes for Black and Brown communities, and indeed all low income areas of the state. Similarly, careful consideration should be provided to establishing a baseline that enables aspirational and effective utility performance, not a low bar that is meaningless and permits windfall profits.

The rationale for maximizing the at-stake ROE points on the new affordability standard(s) is justified. As noted above, the General Assembly has placed a priority on incorporating considerations of affordability for low income customers and an examination of affordability by zip code. To date, low income customers have been left behind in the rate-setting process, as evidenced by the tens of thousands of customers who are disconnected each year.¹² Moreover, as shown above, even those who enroll in these assistance programs face energy burdens significantly higher than those with greater incomes. Given the affordability crisis thousands of low income customers across the state face today, the Commission should prioritize in weight and attention within the 60-point PBR spread the metric that addresses low income customer affordability, which should be designed to incorporate incentives to reduce the existing disproportionate impact of ComEd and Ameren's disconnection policies and procedures on Black and Brown communities.

To put the value of the PBR metrics in perspective, an examination of current Ameren and ComEd profit levels under existing formula rates and the new PBR structure is informative. The current ROE under formula rates for Ameren and ComEd is 8.38%.¹³ The anticipated change in permitted ROEs for Ameren under the new PBR ratemaking scheme, is 9.5%, based on ICC orders in recent gas utility rate cases – more than 110 basis points higher than current ROE levels. Accordingly, while to the extent that the PBR mechanism incorporates the new, aforementioned affordability and equity factors, their total value when compared with the jump in allowed profit that ComEd and Ameren will receive under the new PBR rate structure is noteworthy.

Other aspects of the multi-year PBR rate-setting process will similarly guarantee utility profits notwithstanding the new affordability metrics. For example, both ComEd and Ameren will be allowed to reconcile their revenues each year to achieve 105% of the approved revenue requirement calculated in the prior year.¹⁴ In addition, the new statute provides for the exclusion from this reconciled revenue requirement calculation of the impacts of the following “volatile and fluctuating variables that occurred during the year,” including:

- (i) storms and weather-related events for which the utility provides sufficient evidence to demonstrate that such expenses were not foreseeable and not in control of the utility;
- (ii) new business;
- (iii) changes in interest rates;

¹² See utility reports of disconnections, ICC Docket No. 20-0309, <https://www.icc.illinois.gov/docket/P2020-0309/documents>

¹³ See ICC Rate Case History report, Electric Utilities tab, icc.illinois.gov/icc-reports

¹⁴ See 220 ILCS 16-108.18(f)(6)(A)(ii).

- (iv) changes in taxes;
- (v) facility relocations;
- (vi) changes in pension or post-retirement benefits costs due to fluctuations in interest rates, market returns or actuarial assumptions;
- (vii) amortization expenses related to costs; and
- (viii) changes in the timing of when an expenditure or investment is made such that it is accelerated to occur during the applicable year or deferred to occur in a subsequent year.¹⁵

Other accounting directions, such as incorporation of a year-end rate base¹⁶ when calculating the utility's revenue requirement, adds to the potential for windfall profits and significantly increased customer rates under the new rate-setting process.

Given these statutory directives, unless PBR metrics are set to be aspirational and require significant effort, Ameren and ComEd could easily achieve windfall profit levels of more than 10%. This reality again points to the need for robust incentives and penalties within any affordability metrics and a heavy weighting among the several metrics approved. Such metrics should focus on reducing the energy burden and punitive impacts of current utility disconnection and credit and collection processes that have been highlighted above.

Indeed, establishing significant and aspirational metrics for affordability measures is consistent with Section 16-108.18(e)(2)(F), which provides, in relevant part:

In determining the appropriate level of a performance incentive, the Commission shall consider: the extent to which the amount is likely to encourage the utility to achieve the performance target in the least cost manner; the value of benefits to customers, the grid, public health and safety, and the environment from achievement of the performance target, including in particular benefits to equity investment eligible community; the affordability of customer's electric bills, including low-income customers, the utility's revenue requirement, the promotion of renewable and distributed energy, and other such factors that the Commission deems appropriate. The consideration of these factors shall result in an incentive level that ensures benefits exceed costs for customers. (Emphasis added.)

III. The Commission should require commensurate modifications to existing utility Incentive Compensation measures to align with new performance affordability metrics.

When stakeholders, Staff and the utilities discuss creating new PBR metrics for the utilities, it must be asked: What incentive compensation metrics exist today for utility management, and are they consistent with the new provisions in the Act that emphasize energy affordability for low income customers and an examination of zip-code-level impacts of credit and collection policies? How are credit and collections managers compensated today when it comes to their job performance incentives? Are they, for example, additionally compensated to simply minimize bad debt as a priority without assessing the number of disconnections that occur on a monthly basis in low income zip codes with a goal toward maximizing uninterrupted utility service? And, similarly, what are the algorithms used by utilities to assess a customer's risk for disconnection, and how does that assessment impact the rate at which a customer is disconnected from essential utility service?

To the extent that current incentive compensation is *not* formulated to minimize disconnections, changes are needed now within utility compensation metrics to prioritize achievement of uninterrupted utility service for a maximum number of customers, rather than simply focusing on minimizing bad debt. Unless

¹⁵ *Id.*

¹⁶ *Id.*

and until employee incentive compensation is aligned with the equity and affordability principles outlined in Section 16-108.18 of the Act, there will be contradictions in ratemaking practices and unacceptable disconnection rates in low-income Black and Brown communities.

The aforementioned zip code data analysis demands action by the utilities *now* to minimize existing disparate impacts on Black and Brown communities and improve equity in ratemaking.

IV. Due to the accelerated timeline for these workshops, Staff's Report should not provide *specific* metric recommendations.

Under Section 16-108.18, Staff must complete workshops exploring PBR metrics by October 31, 2021. Thus, Staff had only about a month to organize workshop meetings. The utilities provided no specific recommendations or data that would inform potential metrics and baselines. Stakeholders currently lack critical data in the possession of the utilities to make specific recommendations on any metric, including critical affordability metrics. As such, it is hoped that the Staff's report highlights the presentations, conversations and written comments presented to date in this process, without making *specific* numerical conclusions related to metrics and baselines. Until Staff and stakeholders are able to obtain detailed, specific data through discovery in the upcoming litigated PBR docket before the ICC, any conclusions and recommendations made in the Staff report should be general in nature, and subject to modification based on information obtained through the litigated proceeding.

V. Conclusion

NCLC appreciates the opportunity to submit written Comments for the Staff PBR workshop report, and appreciates the challenge Staff is faced with in producing a substantive report under a near-impossible timeline. NCLC urges Staff to offer conclusions consistent with the recommendations made in these Comments.

Respectfully submitted,

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